



# Department of Planning, Housing, & Community Development

**Mayor, Richard C. David**

*Director, Jennie Skeadas-Sherry AICP*

## ***STAFF REPORT***

TO: Zoning Board of Appeals Members  
FROM: Planning Housing and Community Development  
DATE: July 18, 2014  
SUBJECT: 162 Water Street and adjacent 20-foot wide alley; Area Variances  
TM ID #: 160.40-2-20  
CASE: 2014-19

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### **A. REVIEW REQUESTED**

This application would provide for the construction of an ancillary parking lot intended to serve an adjacent furniture store. An ancillary parking lot is defined as a parking area which is ancillary to a principal use not situated on the same lot as such parking area, which is not operated as a separate commercial enterprise available to the public at large and which is created to provide part of the required parking for the principal use.

The parking area would be located at 162 Water Street and would also occupy the entire 20 foot wide public alley that is located adjacent to the south of 162 Water Street. The total project area would be 6,722 square foot. 162 Water Street was previously improved with a 5 story building occupied by the Ellis Bros furniture store. The building was recently demolished following a fire. The alleyway currently provides rear access to several buildings that front on Court Street and the Metro Center Plaza.

The submitted site plan indicates that the parking area would contain 15 parking spaces, one of which would be accessible. Landscaping would be provided along the front lot line and partially along the southern boundary of the alley.

The following area variances are required:

	Proposed	Required
Lot coverage	95%	90% maximum
Rear Landscape Buffer	none	5-foot wide along entire length of rear lot line
Side Landscape Buffer	none*	5-foot wide along entire length of side lot lines

\* A portion of the side of the alley would be landscaped (see site plan)

In granting an area variance, the Zoning Board of Appeals must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety, and welfare of the neighborhood or community by such a grant. The following must also be considered:

- (a). **Undesirable change:** Whether an undesirable change will be produced in the character of the neighborhood, or whether a detriment to nearby properties will be created;
- (b). **Reasonable alternative:** Whether the Applicant can achieve his goals via a reasonable alternative that does not involve the necessity of an area variance;
- (c). **Substantial request:** Whether the variance requested is substantial;
- (d). **Physical and Environmental Conditions:** Whether the requested variance will have an adverse impact on the physical or environmental conditions in the neighborhood or district;
- (e). **Self-created hardship:** Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting an area variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

## **B. ADDITIONAL REVIEWS**

Site Plan approval from the Planning Commission is required. The Commission will hold a public hearing on August 11, 2014.

Representatives of the following departments were provided case materials and an opportunity to offer comments on the proposal: Building, Engineering, Public Works and Fire Departments and the Shade Tree Commission. The deadline for this comment period is July 15, 2014.

The proposed project is located within the Court Street Historic District; review by the Commission on Architecture and Urban Design ('CAUD') is required. The applicant has submitted an application for this review.

The proposed project is located in the Local Waterfront Revitalization Program area; review by the Waterfront Advisory Committee ('WAC') is required.

The Traffic Board has reviewed the project and approved the new curb cut.

The proposed project is within 500 feet of a Broome County-owned facility, and is therefore subject to 239 distribution and comment by Broome County Department of Economic Development & Planning. Comments were received and are incorporated by reference.

## **C. PREVIOUS ZONING BOARD & PLANNING COMMISSION ACTIVITY**

37 Court Street: Starr Child Day Care was given permission to operate a day care center in 1995 through a Series B Site Plan review.

7 Court Street: In October of 2012, the Zoning Board of Appeals granted a variance for Minimum Off-Street Parking, required for new construction in the C-2 District.

31 Court Street: In June of 2012, Planning Staff granted a Series A Site Plan / Special Use Permit Exception

for a Nail Salon in the C-2 District.

37 Court Street: Starr Child Day Care was given permission to operate a day care center in 1995 through a Series B Site Plan review.

40 Court Street: In January of 2012, the Planning Commission approved a Series A Site Plan / Special Use Permit for a Multi-Unit Dwelling (More than 4 Bedrooms).

41 Court Street and 153-157 Washington Street: In 2011 the Planning Commission granted a Special Use Permit and Series A Site Plan Approval to Galaxy Brewing Company, LLC to establish a brewpub.

47 Court Street: In 2012 the Planning Commission granted a Special Use Permit and Series A Site Plan Approval to Evison Properties, LLC, for the creation of one (1) residential unit with five (5) bedrooms, located on the second floor of the existing building.

49 Court Street:

- In August of 2000, the Planning Commission granted a Special Use Permit and Series A Site Plan Review to Metrocenter Associates LLC to construct a 25,180 square foot, third floor addition to the Metrocenter.
- The Zoning Board of Appeals granted an area variance of off-street parking to Metrocenter Associates LLC to construct a 25,180 square foot, third floor addition to the Metrocenter.

227-241 Washington Street: In 1989, the Zoning Board of Appeals granted two area variances regarding off-street parking requirements to Sarbro Realty to permit the construction of an office building.

245 and 249 Washington Street: In 1987, the Planning Commission granted a Special Use Permit to the First Assembly of God to use the building at 249 Washington Street as an accessory to the church and to use 245 Washington Street for parking.

168 Water Street: A Series B Site Plan application submitted by the Broome County Department of Social Services for a day care center and business office was approved by the Planning Department in 1988.

## D. ENVIRONMENTAL IMPACT

The applicant's proposal is a SEQR **Unlisted** Action. The Zoning Board of Appeals should be the lead agency to determine any environmental significance related to the area variances.

1. Motion to determine what type of action:
  - a. Type I
  - b. Type II
  - c. **Unlisted**
2. Determine Lead Agency and other involved agencies.
3. After the Public Hearing, Determination of Significance. The Zoning Board of Appeals, acting as Lead Agency, is responsible for completing Part 2 & Part 3 of the Environmental Assessment Form (EAF)— see below.

**SEQR EAF Part 2 - Impact Assessment.** The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available. When answering the questions the Zoning Board should be guided by the concept “Have our responses been reasonable considering the scale and context of the proposed action?”

	NO, OR SMALL IMPACT MAY OCCUR	MODERATE TO LARGE IMPACT MAY OCCUR
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Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
Will the proposed action result in a change in the use or intensity of use of land?		
Will the proposed action impair the character or quality of the existing community?		
Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
Will the proposed action impact existing:  A. public / private water supplies?  B. public / private wastewater treatment utilities?		
Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
Will the proposed action result in an increase in the potential for erosion, flooding or drainage Problems?		
Will the proposed action create a hazard to environmental resources or human health?		

**EAF Part 3 - Determination of significance.** For every question in Part 2 that answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- If the Zoning Board of Appeals determines that the proposed action may result in one or more potentially large or significant adverse impacts an environmental impact statement is required.
- The Zoning Board of Appeals may issue a Negative Declaration if it is determined that the proposed action will not result in any significant adverse environmental impacts.

## E. STAFF FINDINGS

Planning Staff has the following findings:

**Area Variance Findings:** Section 410.92D states that where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, solar access or any other regulations pertaining to bulk and not specifically related to use of land or buildings unreasonable or impossible to comply with, the Zoning Board of Appeals may vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In making such determination the Board shall consider:

**(a) Undesirable change in neighborhood character: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance(s).**

While a surface parking lot may produce a change in the character of the area, the variances in and of themselves would not since the site as previously developed exceeded the lot coverage requirements and did not include landscaping. Further, the surrounding properties exceed lot coverage requirements and do not include landscaping. Landscaping would be provided along the front lot line where it would help to screen the proposed parking area from the public right-of-way.

**(b) Alternative cure sought: whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance(s);**

The proposed parking area would not meet standards for parking space dimensions and maneuvering aisle requirements without the requested variances.

**(c) Substantiality: whether the area variance(s) requested is substantial;**

The variances requested could be considered substantial and may be cause to consider if the site is too small to accommodate the proposed development.

**(d) Adverse effect or impact: whether the requested variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;**

The site as previously developed exceeded the lot coverage requirements and did not include landscaping. Further the surrounding properties exceed lot coverage requirements and do not include landscaping. The requested variances therefore would not have an adverse effect on the neighborhood but would be consistent with the development pattern.

**(e) Not self-created: whether the alleged difficulty was self-created, the consideration of which shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance(s).**

## **H. ENCLOSURES**

Enclosed are copies of the site plan, the application and site photos.